

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Griselda Brown-Stahlman

v.

Civil No. 04-cv-322-SM

Charter Trust Company

O R D E R

Plaintiff moves to compel production of documents in response to request nos. 5, 14, 17, 18 and 19.

Background

Plaintiff has asserted race and gender discrimination in her employment with defendant. Defendant denies discrimination and asserts that plaintiff was instead disciplined for a series of her alleged errors.

Discussion

The document requests were served on April 26, 2005. Responses were not made nor objections served within 30 days as required by Rule 34. Plaintiff's counsel renewed the requests in June and again by a letter of July 13, 2005. At last on July 15, 2005 defense counsel promised a response in the next week (over 60 days late). Confidentiality concerns were expressed and

efforts were made to arrive at a protective order. To provisionally resolve matters defense counsel promised employment file "Cvs or resumes, all disciplinary materials, all evaluations and job application materials." Defendant reneged on that agreement.

The appearance of new counsel 90 days after discovery was overdue does not give defendant a new lease on Rule 34 requirements. No privilege log has ever been served.

Under these circumstances defendant's failure to make a timely objection serves to waive the objection. See Marx v. Kelly, Hartman & Hallman, P.C., 929 F.2d 8, 12 (1st Cir. 1991). Where, as here, the delay is now almost ten months, a protective stipulation is in place, and a party has agreed to some of the requests then reneged, the defendant has waived its objections. The motion (document no. 17) is granted as follows: (1) the documents requested by request nos. 5, 14, 17, 18 and 19 are to be produced under the Protective Stipulation; and (2) plaintiff

is awarded her reasonable attorney's fees and costs.¹

SO ORDERED.


James R. Muirhead
United States Magistrate Judge

Date: March 16, 2006

cc: Eleanor H. MacLellan, Esq.
Peter G. Callaghan, Esq.

¹If defendant disputes the reasonableness notify the Clerk and I will hold a hearing.